

REMARKS

I. Status of the Application.

In this Submission, the specification, drawings and claims 1-3, 5, 6, 9-20 and 25 have been amended. Thus, claims 1-6, 9-20 and 25 remain for prosecution.

II. Applicants' Amendments Do Not Constitute New Matter.

Applicants submit that the enclosed substitute specification, amended claims and replacement drawings do not introduce new matter. The substitute specification is provided to correct typographical and grammatical errors and to improve the consistency of the terminology used in the specification. Claims 1, 12 and 20 have been amended to clarify that the product specific data is collected by the claimed method as a "function of time." The claims have also been amended to correct grammatical, typographical errors and to improve the consistency of the terminology used in the claims. Support for the amended claims is provided, for example, in Figures 3, 6-8, 19 and 20c of the Application as originally filed.

With regard to the drawings, replacement sheets are provided to correct informalities. Accordingly, Applicants respectfully request that the amended specification, claims and the replacement sheets be accepted and entered.

III. The Objection to the Drawings Should Be Withdrawn.

The Examiner has objected to the drawings under 37 C.F.R. § 1.83 (a) because element 440 was allegedly not depicted in Figure 6. Applicants respectfully submit that the original Figure 6 displays reference number 440. However, to avoid any further confusion caused by the

informalities of the original Figures, Applicants submit replacement sheets for each of the Figures 1-25. As can be clearly seen in replacement Figure 6, reference number 440 is depicted.

IV. The Rejection of Claims 12-15, 18 and 19 Under 35 U.S.C. § 102(e), Should Be Withdrawn.

The Examiner has rejected claims 12-15, 18 and 19 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Publication No. 2003/0150909 to Markham ("Markham"). Claims 12-15, 18 and 19 have been amended. It is respectfully submitted that Markham does not anticipate claims 12-15, 18 and 19 because Markham does not disclose all of the limitations of these claims. In particular, Markham does not teach the step of "collecting first product specific data... as a function of time" as recited in claims 12. A rejection under section 102(e) can be overcome by showing that the prior art does not disclose all of the limitations of the claims or amending the claims to patentably distinguish over the prior art. MPEP § 706.02(b).

Markham discloses, teaches and suggests a system that ensures that the system is operating in accordance with the prescribed budget. (para. [0002, 0009, 0049]). The Markham system allows for pre-defined key performer indicators to be set by the financial department. (para. [0049]). The Markham system is reactive in that it only collects information when an event occurs. Markham specifically states its system "collects, stores, and reports production information ... on an event basis." (para. [0035]). As defined in Markham, "an event" means "any incident that may affect the productivity of a process or machine in use to produce a product, or that may adversely affect the quality of the product being produced." (para. [0036]). The Markham system provides for setting financial alerts for pre-defined events and generating

a report from the information collected after the event has occurred if that information exceeds the alert. (para. [0057-0062]).

Nothing in Markham discloses, teaches or suggests a method that collects first product specific data... as a function of time". Rather, Markham specifically states that it only collects information after a defined event occurs.

For these reasons, it is respectfully requested that the rejection of claim 12 under 35 U.S.C. § 102(e) as being anticipated by Markham should be withdrawn. Moreover, Applicants respectfully submit that the rejections of claims 13-15, 18, and 19 under 35 U.S.C. § 102(e) should be withdrawn because claims 13-15, 18, and 19 depend from and incorporate all limitations of amended claim 12, which is not anticipated by Markham.

V. The Rejections of Claims 1-6, 9-11, 16, 17, 20, and 25 Under 35 U.S.C. § 103(a) As Being Obvious Over Markham In View of Spriggs Should Be Withdrawn.

The Examiner has rejected claims 1-6, 9-11, 16, 17, 20, and 25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Markham in view of U.S. Patent Number 6,421,571 to Spriggs et al. ("Spriggs"). Applicants respectfully submit that neither of the prior art references teach or suggest all the limitations of these claims. In particular, Markham does not teach the step of "collecting first product specific data... as a function of time" as recited in claims 1 and 20. Three criteria must be met to establish a *prima facie* case of obviousness: (i) there must be some suggestion or motivation to combine the teachings of two or more prior art references; (ii) there must be a reasonable expectation of success; and (iii) "all of the claim limitations must be taught or suggested by the prior art." MPEP §§ 2143 and 2143.03 (citing *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974)).

Applicants respectfully submit that the combination of Spriggs with Markham does not disclose, teach or suggest a method comprising the steps of "automatically collecting a first product specific as a function of time", as claimed in claims 1 and 20. As explained above, Markham is an event based system that only collects data once a specifically delivered "event" occurs to determine waste and delay and Spriggs only discloses, teaches and suggests collecting data related to the equipment or assets to determine when the equipment or assets need maintenance. Thus, the combination of Spriggs and Markham does not disclose the steps of collecting and storing " product specific data...as a function of time."

Accordingly, Applicants respectfully submit that neither Markham nor Spriggs, alone or in combination, disclose, teach or suggest all of the limitations of amended claims 1 and 20 and that the rejection of claim 1 and 20 under 35 U.S.C. § 103(a) as being obvious over Markham in view of Spriggs should be withdrawn. Moreover, Applicants respectfully submit that the rejections of claims 2-6, 9-11, 16-17 and 25 under 35 U.S.C. § 103(a) should be withdrawn because each of these claims depend from and incorporate all the limitations of amended claims 1, 14 and 20, respectively. ("If an independent claim is not obvious under 35 U.S.C. § 103, then any claim depending therefrom is not obvious." MPEP § 2143.03 (citing *In re Fine*, 837 F.2d at 1385)).

VI. Applicants Petition for an Extension of Time and Request for Continued Examination.

Applicants hereby petition for an extension of time of three (3) months, under 37 C.F.R. § 1.136(a), thereby extending the deadline for response, pursuant to 37 C.F.R. §§ 1.7(a) & 1.136(a), to Thursday, March 15, 2007. Applicants also request continued examination by

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submitting a Request for Continued Examination transmittal form, this response and payment of the filing fee of \$790.00. Applicants authorize payment for this extension of time in the amount of \$1,020.00 and for this request for continued examination in the amount of \$790.00 to be charged to the identified credit card. When doing so, please reference the above-listed docket number for this file.

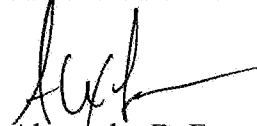
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CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that claims 1-6, 9-20, and 25 are allowable claims and Applicants have made a patentable contribution to the art. Favorable reconsideration and allowance of this Application is therefore respectfully requested. In the event the Applicants have inadvertently overlooked the need for payment of an additional fee, Applicants conditionally petition therefore, and authorize any deficiency to be charged to deposit account 09-0007. When doing so, please reference the above-listed docket number.

Respectfully submitted,

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